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Advisory Opinion 12-02 (Acceptance of Travel Expenses from a Nonprofit Entity)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for employees of the State Purchasing Office to accept travel reimbursement from the Western States Contracting Alliance to attend conferences, trainings, and meetings under the circumstances described in the request.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for an advisory opinion, asking whether employees of the State Purchasing Office (“SPO”) in the Division of Finance and Procurement in the Department of Personnel and Administration may accept travel reimbursement from the Western States Contracting Alliance (“WSCA”) in connection “with their attendance at WSCA directors meetings, committee and sourcing team meetings and conferences?” SPO also asks whether the agency could accept funds which would then be used to pay employee travel expenses.

According to the request, the “State of Colorado is a member of the National Association of State Procurement Officials (“NASPO”), a non-profit, multi state

cooperative purchasing association...which facilitates cooperative purchasing on behalf of the states and certain other government entities.” All fifty states are members as well as other government entities. The State of Colorado pays dues to NASPO in the amount of \$1200 each year. The State is also a member of the WSCA¹, and the chief procurement officials from each of the member states serve as directors.

According to the request, “the primary purpose of WSCA is to establish a means by which participating states can join together in cooperative multi-state contracting...to achieve cost effective and efficient acquisition of quality products and services. Currently, more than thirty multi-state contracts are available for use by WSCA member states.” WSCA uses a “lead state” model, by which one state is responsible for the negotiation of a contract on behalf of all the WSCA states, pursuant to the lead state’s procurement statutes and rules. Each WSCA state, in addition to the lead state, may participate in the contract by entering into a separate participating addendum with the contract vendor. The contract is then administered by the lead state. Colorado is currently the lead state on two procurement contracts. Colorado also enters into non-WSCA contracts and negotiates directly with the vendor in those circumstances.

According to the request, “a vendor entering into a WSCA contract may be required to remit a fee to WSCA for administration of the contract.” The fee is based on a percentage of the total amount spend by the WSCA states under that contract. The fee ranges from .05% to 1.5% of the total amount, depending upon the complexity of the contract, and other factors. One portion of those fees is used for WSCA’s administrative costs, and another is used to fund the salaries and operating costs of the

¹ Fifteen states are members of WSCA: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

SPO. A third portion of those fees are used to defray the costs of conferences and trainings which employees of WSCA member states are allowed to attend at WSCA's expense. The specific employees are chosen by the respective chief procurement officer of each state. The State of Colorado pays for attendance at these conferences, and is subsequently reimbursed by WSCA after review. Colorado received an allocation of \$20,000 for training in 2011, and the same amount in 2012.² The amount of money available to the WSCA member states is given per capita and not based on the amount of purchases. Additional funds may be set aside for grants to member states on a *pro rata* basis. According to information before the Commission, only representatives of the WSCA member states participate in these conferences; there are no vendors or potential vendors represented.

WSCA is a subset of NASPO which is a nonprofit organized under section 501(c)(3) of the Internal Revenue Code. The sole source of income for both organizations is the administrative fees paid by the vendors on cooperative purchasing contracts and membership fees.

II. JURISDICTION

The IEC finds that employees of the SPO are “government employees” subject to the jurisdiction of the Commission. CO Const. Art. XXIX (1).”

III. DISCUSSION

A. The Travel Reimbursement is not a gift to a Covered Individual

The administrative fee that is the source of the travel funding is contractually allocated to the state. Although WSCA is the custodian of the money, it is dedicated for

² According to the SPO, the amount of money it typically submits for reimbursement is substantially less than the amount permitted.

use by the state. The travel reimbursement is, therefore, not a gift to a covered individual, but, rather, an expenditure by the State Purchasing Office.

The amount of the fee is based on the State's participation, and if that fee were not assessed, the money would remain with the State. Thus the Commission finds that under the unique circumstances of this request, the travel reimbursement is not a gift.

B. Colorado pays dues to WSCA

In addition, the Commission finds that because the State of Colorado pays dues to WSCA, a portion of those dues may be considered as consideration for the travel reimbursement. See, Position Statement 10-01. The Commission would need more information to determine if this were the case, and the reimbursement must be specifically invoiced to reflect that fact.

C. There is consideration for the travel reimbursement

By being a member of WSCA, and participating in WSCA-sponsored contracts, the State is entitled to accept reimbursement for travel to WSCA-sponsored conferences and meetings. If Colorado decided to end its relationship with WSCA, it would no longer be permitted to attend these conferences. The Commission therefore finds that there is valid consideration of equal or greater value for the travel reimbursement, and therefore it is not a gift under Article XXIX. The Commission notes that in many situations, Colorado chooses not to participate in the WSCA contract. That decision is based on an analysis of whether for that specific contract, Colorado would benefit from the contract price. The State also considers other factors, such as availability of services in the state, and contract diversity, among others.

D. There is no appearance of impropriety in acceptance of this reimbursement

As noted above, the WSCA conferences are open solely to representatives of WSCA member states and government entities. Moreover it is the State, and not WSCA which selects the attendees. Thus the Commission is satisfied that these conferences are not excuses for vendors and potential vendors to lobby for their products. The Commission has been informed that there are no golf trips or similar entertainment provided at these conferences. Moreover, WSCA carefully scrutinizes the reimbursement forms to ensure that the money is spent appropriately, and that participants are not padding their bills. In addition, the contracts of the SPO are monitored on a regular basis by the Office of the State Auditor, thereby ensuring sound business practices and further reducing the opportunity for abuse.

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for employees of the State Purchasing Office to accept travel reimbursement from WSCA under the circumstances described in the request.

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Dated: February 6, 2012